IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s)	:	Kevin Neil Kirm, et al.	
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Examiner	:	Xiomara L. Bautista	
Title	:	SYSTEM AND METHOD FOR REALTIME MESSAGING HAVING IMAGE SHARING FEATURE	
Atty. Docket No. :		MFCP.108795	
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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Dear Sir:

This is an Appeal from the Final Rejection dated May 18, 2007, rejecting claims 1-39. These claims have been rejected at least two times. Applicants are qualified to appeal under 37 C.F.R. § 41.31(a). Applicants filed a Notice of Appeal on October 18, 2007 with the appropriate fee, which was within the time period provided under 37 C.F.R. § 1.134. The two-month deadline for submitting this appeal brief is December 18, 2007. The fee set forth in 37 C.F.R. § 41.20(b)(2) of $500 is authorized be debited from Deposit Account No. 19-2112.

Contents follow.

Contents

I.   REAL PARTY IN INTEREST

The real party in interest is MICROSOFT CORPORATION, a corporation of the State of

Washington, United States of America. The mailing address for purposes of this Appeal is 2555

Grand Boulevard, Kansas City, Missouri 66205, "attention Peter Hoeller."

II.   RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-39 are the subject of this appeal.

IV. STATUS OF AMENDMENTS

No after-final amendments have been submitted.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Of claims 1-39, claims 1, 18, and 32 are independent. The present invention is defined by the claims, but summarily, an embodiment of the invention is directed to a real-time messaging application, such as an "instant messenger," with an image-sharing feature. The image-sharing feature allows a user to insert and share digital photographs or other media in a messaging session. *See, e.g., Specification*, ¶ 0006. In the above embodiment, two or more users operate messaging applications on separate client computing devices, communicating with each other in real time. Other users can be invited to participate in the messaging session. Once in the session, the users can share digital media using the image-sharing feature – *e.g.,* in a slideshow presentation. *See Specification*, ¶ 0006. Control over the presentation of media can be given to any user or group of users. *See Specification*, ¶ 0006.

A. Claim 1

Claim 1 is directed to a computer-implemented messaging system to facilitate messaging between multiple users connected over a network. *See Specification*, ¶ 0012. The system includes a messaging client, media viewer, and presentation engine component. *See Specification*, ¶¶ 0012, 0015, and FIG. 2. FIG. 3, presented below, illustrates the messaging client (108) and media viewer (118).
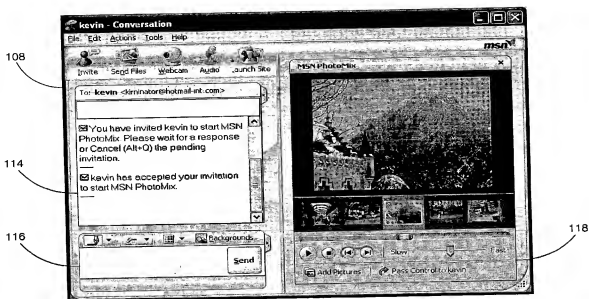
FIG. 3

Specifically, the messaging client presents a dialog interface to at least two users. The dialog interface is a dynamic window displaying typed messages between two users. *See, Specification*, ¶ 0015. One user may invite another user to participate in an image-sharing session by submitting an invitation to join the session through the dialog interface. *See Specification*, ¶ 0015. Once accepted to join the session, the media viewer is opened and presented to the accepting user.

Communicating with the messaging client, the media viewer selectively presents a set of shared media objects selected by a user with control of the image-sharing session (referred to herein as the "control user") to other users in the image-sharing session without control. *See, e.g., Specification*, ¶ 0018. The control user may select, play, stop or otherwise manipulate the presentation of the set of shared media objects using various controls on the media viewer (e.g., a slider control for varying speed). *See Specification*, ¶ 0018.

The presentation engine component operates within the media viewer. Specifically, the presentation engine component presents all of the shared media objects to users without control. Presentation of the shared media objects is facilitated by parallel execution of independent image-processing operations, illustrated in FIG. 5 on the next page. *See, also, Specification*, ¶¶ 0021-0023.
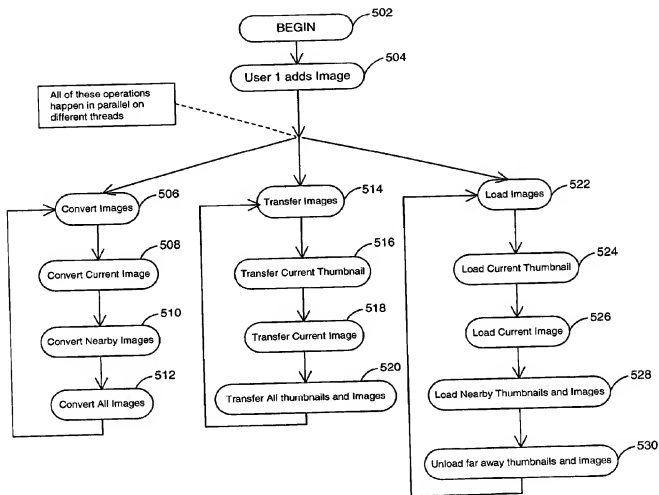

FIG. 5

As illustrated in FIG. 5 and the Specification, image processing is performed by concurrent, parallel execution of different processes on separate processing threads. *See Specification*, ¶ 0021. The presentation engine component executes different image-processing operations in parallel. Specifically, one process converts at least one media object into a thumbnail-sized representation for viewing by the control user. *See Specification*, ¶ 0021. Another process transfers all of the shared media objects and the thumbnail-sized representations to the user without control. *See Specification*, ¶ 0022. Still another process loads all of the shared media objects and the thumbnail-sized representations for viewing by the user without control. *See Specification*, ¶ 0023. Again, these processes are executed on separate processing threads in parallel.

B.   Claim 18

Claim 18 is directed to a communication method for facilitating a messaging session between multiple users connected over a network. The method enables users to communicate textual messages and share digital media in an image-sharing session. *See Specification*, ¶ 0021-0023. A dialog interface is presented to at least two users via a messaging client, such as the messaging client described above with reference to FIG. 3. Shared media objects selected by a control user are presented to at least one user without control of the objects.

Presentation of the shared media objects is performed by executing the "convert," "transfer," and "load" operations recited in claim 1. Specifically, one process converts at least one media object into a thumbnail-sized representation for viewing by the control user. *See Specification*, ¶ 0021. Another process transfers all of the shared media objects and the thumbnail-sized representations to the user without control. *See Specification*, ¶ 0022. Still another process loads all of shared media objects and the thumbnail-sized representations for viewing by the user without control. *See Specification*, ¶ 0023.

C. Claim 32

Claim 32 is directed to a set of shared media objects generated according to a particular method. The method comprise initially presenting a dialog interface to at least two users via a messaging client. A selector tool is executed that selects the set of media objects specified by a control user. All of the media objects selected by the control user are presented to the other users through parallel execution of independent image-processing operations.

The image-processing operations include the processes mentioned above with reference to claim 1. Specifically, one process converts at least one media object into a thumbnail-sized representation for viewing by the control user. *See Specification*, ¶ 0021. Another process transfers all of the shared media objects and the thumbnail-sized representations to the user without control. *See Specification*, ¶ 0022. Still another process loads all of shared media objects and the thumbnail-sized representations for viewing by the user without control. *See Specification*, ¶ 0023.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following recites each ground of rejection presented herein for review by the Board:

1. Whether claims 1-39 are unpatentable under 35 U.S.C. § 103(a) in light of U.S. Patent No. 7,003,728 to Berque ("Berque") in view of U.S. Patent Publication No. 2003/0191816 to Landress et al. ("Landress") and U.S. Patent No. 6,072,479 to Ogawa ("Ogawa").

VII. ARGUMENT

A. The rejection of claims 1-39 under 35 U.S.C. § 103(a) for being obvious in light of the combination of Berque, Landress, and Ogawa should be reversed because Rachabathuni does not describe each and every element of claims 1-39.

The requirements of a *prima facie* case of obviousness are summarized in MPEP §§ 2143 2143.03, and have not been met in this case. To establish a *prima facie* case of obviousness,

inter alia, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* § 2143. Berque, Landress, and Ogawa simply do not teach or suggest all of the limitations of claims 1-39.

      1)   <u>Independent Claims 1, 18, and 32</u>

Claims 1-39 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by Berque in view of Landress and Ogawa. These references, whether taken alone or in combination, fail to teach or suggest all of the limitations of each of claims 1-39, as hereinafter set fort.

Referring initially to independent claim 1, a computer-implemented messaging system is recited comprising, in part, a presentation engine component for presenting all of the media objects within a set of media objects to a user without control by parallel execution of independent image-processing operations. *See Specification*, ¶ 0021. Claim 1 recites an image-processing operation to "***convert at least one media object into a thumbnail-sized representation***" for viewing by a user without control. (emphasis added). Support for this amendment is given in ¶ 0021 of the Specification, which states that an image "may be converted in layout size, color depth or other parameters, for instance to generate a thumbnail-sized representation of the selected image." The Office conceded that the Berque reference does not teach parallel execution of independent image-processing operations to convert media objects for viewing. *See Office Action*, p. 3 (May 18, 2007).

Landress was cited in the Office Action for teaching the parallel processing of the three operations of claim 1. *See Office* Action, p. 3 (May 18, 2007). However, Landress discloses an advertising medium for creating rich media content that can be delivered to a user by executing promotional media content in parallel or in series with entertainment, information, or message

content. *See Landress*, Abstract, FIG. 5, FIG. 8, ¶¶ 0025, 0029-0030, 0052, 0054, and 0094-0096. In other words, the Landress reference discloses executing multiple media content items in parallel to create dynamic media content. For example, the Landress reference discloses combining a video file and an audio file into a single file that executes both simultaneously. *See Landress*, FIG. 8. This can hardly be seen as the same parallel processing necessary to convert, transfer, and load media objects and their representations on independent threads.

Claim 1 goes further, however, reciting a presentation engine component configured to execute multiple, parallel processes to images selected by a control user accessing the media viewer of a messaging client. In other words, media objects processed by the presentation engine were selected by a user who has control of an image-sharing session. None of the cited references teach or suggest parallel execution of image-processing operations on images selected by a user with control on an image-sharing session.

The Office relies on Ogawa to teach the image-processing operation of claim 1 to "convert at least one media object into a thumbnail-sized representation of the at least one media object." But this recitation requires converting a media object that was selected by a user in the media viewer of claim 1 – *i.e.*, selected during an image-sharing session between a user with control and at least one other user without control. Ogawa simply does not teach or suggest converting such a media object.

To the contrary, Ogawa discloses a scenario-editing system that allows users to create empty (or "null") media objects and later populate them with surrogate media objects. *See Ogawa*, Abstract; col. 3, lines 21-57; col. 4, lines 58-63. The Office stated that "Ogawa explains that the invention allows uses to share application images even in the initial development stage where no media object [sic] are available." *Office Action*, p. 4 (May 18,

2007) (referencing *Ogawa*, col. 1, lines 37-41). But the statement in Ogawa in support of this contention only describes sharing images between producers, scenario writers, and creators using a multimedia project-development software tool. *See Ogawa*, col. 1, lines 37-41. Ogawa never mentions sharing images selected by a user with control of an image-sharing session, as recited in claim 1. Therefore, Ogawa does not teach or suggest a presentation engine component configured to perform the "convert" process of claim 1.

Moreover, claim 1 further recites presenting the media objects selected by the user with control to other users by parallel execution of independent image-processing operations that convert, transfer, and load "thumbnail-sized representations." The cited references do not teach or suggest executing independent, parallel processes to convert, transfer, and load thumbnails. At best, Ogawa mentions thumbnails of media objects as a list of thumbnails, for allowing a use to drag and drop the thumbnail onto another thumbnail to establish an association between the two. *See Ogawa*, col. 4, lines 58-63. This citation falls short, however, of teaching or suggesting the three parallel processes applied to thumbnails, recited in claim 1.

Neither Berque, Landress, nor Ogawa, taken alone or in combination, teaches or suggests all of the limitations of claim 1. Therefore, a *prima facie* case of obviousness of claim 1 cannot be established by the asserted combination of references. Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection of claim 1 is respectfully requested.

Likewise, independent claims 18 and 32 recite, in part, similar image-processing operations as claim 1. These operations are applied to thumbnail-sized representations of media objects selected by the control user. Therefore, independent claims 18 and 32 are not taught or suggested by the combination of Berque, Landress, and Ogawa. Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 18 and 32 is respectfully requested.

    2)   <u>Dependent Claims 2-17, 19-31, and 33-39</u>

If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *See In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988); *see also,* MPEP § 2143.03. Dependent claims 2-17, 19-31, and 33-39 depend from independent claims 1, 18, and 32. Neither Berque, Landress, Ogawa, nor any combination thereof, teach or suggest all of the limitations of independent claims 1, 18, and 32. Therefore, claims 2-17, 19-31, and 33-39 are in condition for allowance based on their dependence from an allowable claim. Accordingly, the § 103(a) rejections of claims 2-17, 19-31, and 33-39 should be withdrawn.

For at least the reasons listed above, claim 1-39 are believed to be in condition for allowance.

                                   Respectfully submitted,

                                   /Peter J. Hoeller/

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PJH:tq

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Appendices follow.

VIII.   CLAIMS APPENDIX

We claim:

1.   (Previously Presented) A computer-implemented messaging system, comprising:

a messaging client for presenting a dialog interface to at least two users;

a media viewer, communicating with the messaging client, the media viewer selectively presenting a set of shared media objects selected by at least one user with control of an image-sharing session to at least one user without control of the image-sharing session; and

a presentation engine component in the media viewer for presenting all of the media objects within the set of shared media objects to the at least one user without control by parallel execution of independent image-processing operations to:

convert at least one media object into a thumbnail-sized representation of the at least one media object for viewing by the at least one user without control,

transfer all of the media objects within the set of shared media objects and the thumbnail-sized representation to the at least one user without control, and

load all of the media objects within the set of shared media objects and the thumbnail-sized representation to be viewed by the at least one user without control.

2.   (Original) A system according to claim 1, wherein the messaging client comprises a network-enabled chat client.

3.   (Original) A system according to claim 2, wherein the dialog interface comprises at least a mutually viewed chat window presenting typed messages.

4.   (Original) A system according to claim 1, wherein the set of shared media objects comprises at least a set of graphical images.

5.   (Original) A system according to claim 4, wherein the set of graphical images comprises a set of digital photographs.

6.   (Previously Presented) A system according to claim 1, wherein at least one of the users maintains control of the set of shared media objects selectively presented on the media viewer via a transmissible control object, which may be passed to or shared by other users.

7.   (Original) A system according to claim 1, further comprising a selector tool, communicating with the messaging client, the selector tool presenting a set of media objects to select for mutual viewing by the users.

8.   (Original) A system according to claim 1, wherein the media viewer is integrated with the messaging client.

9.   (Original) A system according to claim 1, wherein the media viewer is separate from the messaging client.

10.   (Original) A system according to claim 1, wherein the set of shared media objects comprises at least one of an audio sample and a video clip.

11.   (Original) A system according to claim 1, further comprising at least one annotation object presented via the media viewer.

12.   (Previously Presented) A system according to claim 11 , wherein the at least one annotation object comprises at least one of a sticker object and a pointer, the at least one annotation object being controlled by the at least one user maintaining control.

13.   (Original) A system according to claim 1, wherein at least two of the users share control of presentation of the set of shared media objects.

14.   (Original) A system according to claim 1, further comprising an option to independently select a set of shared media objects to view in the media viewer.

15.   (Original) A system according to claim 1, wherein at least any two of the users may select a set of shared media objects to synchronously view, independently of other users.

16.   (Original) A system according to claim 1, wherein the media viewer comprises an optimized loader, the optimized loader selectively loading media objects in the set of shared media objects to increase response time.

17.   (Original) A system according to claim 1, wherein the media viewer comprises a slideshow tool.

18.   (Previously Presented) A communications method, comprising:

presenting a dialog interface to at least two users via a messaging client; and selectively presenting a set of shared media objects selected by at least one user with control of an image-sharing session to at least one user without control of the image-sharing session by parallel execution of independent image-processing operations to:

convert at least one media object into a thumbnail-sized representation of the at least one media object for viewing by the at least one user without control, transfer all of the media objects within the set of shared media objects and the thumbnail-sized representation to the at least one user without control, and

load all of the media objects within the set of shared media objects and the thumbnail-sized representation to be viewed by the at least one user without control.

19.   (Original) A method according to claim 18, wherein the messaging client comprises a network-enabled chat client.

20.   (Original) A method according to claim 19, wherein the dialog interface comprises at least a mutually viewed chat window presenting typed messages.

21.   (Original) A method according to claim 18, wherein the set of shared media objects comprises at least a set of graphical images.

22.   (Original) A method according to claim 21, wherein the set of graphical images comprises a set of digital photographs.

23.   (Original) A method according to claim 18, wherein at least one of the users maintains control of the set of shared media objects selectively presented on a media viewer via a transmissible control object.

24.   (Original) A method according to claim 18, further comprising a step of presenting a set of media objects via a selector tool to select for mutual viewing by the users.

25.   (Original) A method according to claim 18, wherein the set of media objects is presented via a media viewer integrated with the messaging client.

26.   (Original) A method according to claim 18, wherein the set of media objects is presented via a media viewer is separate from the messaging client.

27.   (Original) A method according to claim 18, further comprising a step of presenting at least one annotation object via the media viewer.

28.   (Original) A method according to claim 18, wherein at least two of the users share control of presentation of the set of shared media objects.

29.   (Original) A method according to claim 18, further comprising presentation of an option to independently select a set of shared media objects to view in the media viewer.

30.   (Original) A method according to claim 18, wherein at least any two of the users may select a set of shared media objects to synchronously view, independently of other users.

31.   (Original) A method according to claim 18, further comprising a step of executing an optimized loader, the optimized loader selectively loading media objects in the set of shared media objects to increase response time.

32.   (Previously Presented) A set of shared media objects, the set of shared media objects being generated according to a method comprising:

presenting a dialog interface to at least two users via a messaging client;

executing a selector tool, the selector tool selecting a set of media objects specified by at least one user with control of an image-sharing session to share with at least one user without control of the image-sharing session; and

presenting all of the media objects within the set of media objects to the at least one user without control by executing independent image-processing operations in   parallel to:

convert at least one media object into a thumbnail-sized representation of the at least one media object for viewing by the at least one user without control,

transfer all of the media objects within the set of shared media objects and the thumbnail-sized representation to the at least one user without control, and

load all of the media objects within the set of shared media objects and the thumbnail-sized representation to be viewed by the at least one user without control.

33.   (Original) A set of shared media objects according to claim 32, wherein the messaging client comprises a network-enabled chat client.

34.   (Original) A set of shared media objects according to claim 32, wherein the dialog interface comprises at least a mutually viewed chat window presenting typed messages.

35.   (Original) A set of shared media objects according to claim 32, wherein the set of shared media objects comprises at least a set of graphical images.

36.   (Original) A set of shared media objects according to claim 35, wherein the set of graphical images comprises a set of digital photographs.

37.   (Original) A set of shared media objects according to claim 32, wherein at least one of the users maintains control of the set of shared media objects selectively presented on a media viewer via a transmissible control object.

38.   (Original) A set of shared media objects according to claim 32, wherein the selector tool is integrated with the messaging client.

39.   (Original) A set of shared media objects according to claim 32, wherein the selector tool is separate from the messaging client.

IX.   EVIDENCE APPENDIX

       Not applicable

X.   RELATED-PROCEEDINGS APPENDIX

       Not applicable